

314 CMR 3.00: SURFACE WATER DISCHARGE PERMIT PROGRAM

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3.01: Purpose and Authority

314 CMR 3.00 has been promulgated by the Department of Environmental Protection pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the National Pollutant Discharge Elimination System Permit Regulations at 40 CFR Part 122.

The purpose of 314 CMR 3.00 is to implement the provisions of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, as applied to surface water discharges, and to ensure that 314 CMR 3.00 confer sufficient authority on the Department to assume delegation from the EPA to administer the NPDES permit program within the Commonwealth. 314 CMR 3.06 also confers authority on the Department to issue general permits for surface water discharges, including general permits for storm water discharges from small municipal separate sewer systems regulated under EPA's Phase II Storm Water Regulations set forth in the applicable provisions of 40 CFR Part 122, Subpart B.

3.02 Definitions

Administrator - the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Best Management Practices or BMPs - schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs include treatment requirements, operating procedures, structures, devices, and/or practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

Biological Monitoring - any test which includes the use of aquatic algal, bacterial, invertebrate, or vertebrate species to measure acute or chronic toxicity, and any biological or chemical measure of bioaccumulation.

Bypass - the intentional diversion of wastes from any portion of a treatment works.

Coastal Waters - all waters of the Commonwealth assigned SA, SB, or SC classifications in 314 CMR 4.00: Massachusetts Surface Water Quality Standards,.

Combined Sewer Overflows or CSO - any intermittent overflow, bypass or other discharge from a municipal combined sewer system which results from a flow in excess of the dry weather carrying capacity of the system.

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Combined Sewer System - a sewer system which, by design, collects and conveys both wastewater and storm water runoff.

Commissioner - the Commissioner of the Department.

Contact Cooling Water - water used to reduce temperature which comes into contact with a raw material, intermediate product, waste product (other than heat), or finished product.

Contiguous Zone - the entire zone established by the United States under article 24 of the convention of the Territorial Sea and the Contiguous Zone.

Control Measure - as the term is used in connection with general permits issued by the Department pursuant to 314 CMR 3.06, refers to any best management practice, (BMP) or other method, used to prevent or reduce the discharge of pollutants to waters of the Commonwealth.

Conventional Pollutant - biochemical oxygen demand, suspended solids, pH, fecal coliform, or oil and grease.

Department - the Massachusetts Department of Environmental Protection.

Discharge or Discharge of Pollutants - any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any source, including but not limited to, discharges from surface runoff which are collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a POTW; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

Effluent - a discharge of pollutants into the environment, whether or not treated.

Effluent Limitation or Effluent Limit - any requirement, restriction, or standard imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth or to publicly owned treatment works.

Effluent Limitation Guideline or Effluent Standard - a regulation published by the Administrator under 33 U.S.C. 1251 § 304, 306 or 307 or by the Department under M.G.L. c. 21, § 27 which is used as a basis for establishing effluent limitations.

Environmental Protection Agency or EPA - the United States Environmental Protection Agency.

Hazardous Substance - any of the substances designated under 40 CFR Part 116 pursuant to 33 U.S.C. 1251 § 311, or any hazardous material as defined in M.G.L. c. 21E.

Hazardous Waste - a hazardous waste pursuant to 310 CMR 30.000: *Hazardous Waste*.

Highest and Best Practical Treatment or HBPT – For the purposes of establishing technology based effluent limitations pursuant to 314 CMR 3.11(5), 4.04(5) and 405(5)(c), HBPT means the technology based standard of “Best Available Technology Economically Achievable (“BAT”) used by EPA under 33 U.S.C. 1251 *et seq.*, defined as the most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters and which represent the best existing performance technologies for a particular pollutant or group of pollutant that are economically achievable.

Illicit Discharge – any discharge to a municipal separate storm sewer system (MS4) that is not composed entirely of storm water, except discharges pursuant to a surface water discharge permit pursuant to 314 CMR 3.00 (other than the surface water discharge permit for discharges from the MS4) and discharges resulting from fire fighting activities.

Indirect Discharger - a discharger introducing pollutants to a treatment works.

3.02: continued

Industrial Waste - any liquid, gaseous, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

Massachusetts Water Quality Standards - 314 CMR 4.00: Massachusetts Surface Water Quality Standards and 314 CMR 6.00: Ground Water Quality Standards.

NPDES - the National Pollutant Discharge Elimination System permit program established pursuant to 33 U.S.C. 1342.

New Discharger - any building, structure, facility, or installation:

- (a) from which there is or may be a new or additional discharge of pollutants at a site at which on August 13, 1979, it had never discharged pollutants;
- (b) which has never received a finally effective NPDES permit for discharges at that site; and
- (c) which is not a "new source".

This definition includes an indirect discharger which commences discharging into waters of the Commonwealth after August 13, 1979.

New Source - any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under 33 U.S.C. 1251 306 which are applicable to such source; or
- (b) After proposal of standards of performance in accordance with 33 U.S.C. 1251 § 306 Act which are applicable to such source, but only if the standards are promulgated in accordance with 33 U.S.C. 1251 § 306 within 120 days of their proposal.

Non-conventional Pollutant - any pollutant other than a toxic pollutant or a conventional pollutant.

Non-contact Cooling Water - water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat), or finished product.

Outlet - the terminus of a sewer system, or the point of emergence of any wastewater or effluent into the waters of the Commonwealth or onto the land surface.

Permit - an authorization issued pursuant to M.G.L. c. 21, § 43 and 314 CMR 2.00, and 3.00, 5.00, or 7.00, to implement the requirements of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 and the Clean Water Act, 33 U.S.C. 1251 *et seq* and the NPDES regulations at 40 CFR Part 122. Depending on the context in 314 CMR 3.00, the term "permit" applies to:

- (a) An individual permit that regulates one or more discharges by a discharger; and/or
- (b) a general permit that regulates one or more categories of discharges and covers multiple individual dischargers who have properly applied for coverage under the general permit.

Person - any agency or political subdivision of the Commonwealth, the Federal government, any public or private corporation or authority, individual, partnership or association, or other entity, including any officer of a public or private agency or organization, upon whom a duty may be imposed by or pursuant to any provisions of M.G.L. c. 21, §§ 26 through 53.

Point Source - any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant - any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works or waters of the Commonwealth.

3.02: continued

Pollutant of Concern – pollutants that include biochemical oxygen demand (“BOD”), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment in any water body to which a MS4 discharges.

Pollution - the presence in the environment of pollutants in quantities or characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas as may be affected thereby.

Pretreatment - the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.

Primary Treatment - a wastewater treatment process in which substantially all floating or settleable solids are removed by screening and sedimentation.

Process Wastewater - any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, or waste product.

Public Entity - any city, town, special district, the Metropolitan District Commission or other existing governmental unit eligible to receive a grant for the construction of treatment works from the United States Environmental Protection Agency pursuant to Title II of 33 U.S.C. 1251.

Publicly Owned Treatment Works or POTW - any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a public entity. A POTW includes any sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

RCRA - the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, as amended by P.L. 95-609, 42 U.S.C. § 6901 *et seq.*)

RCRA Facility - a hazardous waste management facility as defined in 314 CMR 8.03.

Sewage - the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present.

Sewer System - pipelines or conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities used for collecting and conveying wastes to a site or works for treatment or disposal.

Small Municipal Separate Storm Sewer System or Small MS4 – all separate storm sewers that are:

- (a) Owned or operated by the United States, the Commonwealth of Massachusetts, a city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. § 1288 that discharges to waters of the United States.
- (b) Not defined as a large or medium municipal separate storm sewer systems pursuant to 40 CFR s.122.26(b)(4) and (b)(7) or designated under 40 CFR § 122.26(a)(1)(v).
- (c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas such as individual buildings.

3.02: continued

Surface Waters - all waters other than ground waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands and coastal waters.

Storm Water – means storm water runoff, snow melt runoff, and surface water runoff and drainage.

Total Maximum Daily Loads or TMDLs – water quality assessments that determine the source or sources of pollutants of concern for a particular water body, consider the maximum amount of pollutants the waterbody can assimilate, and then allocate to each source a set level of pollutants that it is allowed to discharge (*i.e.*, a “wasteload allocation”).

Toxic Pollutants - those pollutants identified in 314 CMR 3.16 or any other pollutants, or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, may, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, mutations, physiological malfunctions, biochemical abnormalities, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring.

Treatment Works - any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal.

Urbanized Area – a land area comprising one or more places – central place(s) – and the adjacent densely settled surrounding area – urban fringe – that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile, as determined by the federal Bureau of the Census.

Wastewater - sewage, industrial waste, other wastes or any combination of the three.

Waters of the Commonwealth - all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and ground waters.

3.03: Discharges Requiring A Permit

(1) No person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00, unless exempted in 314 CMR 3.05. No person shall construct, install, modify, operate or maintain an outlet for such a discharge or any treatment works required to treat such discharge without having first obtained a discharge permit in accordance with 314 CMR 3.03(1) and written approval from the Department for such activity, unless exempted pursuant to 314 CMR 3.05. The Department may require any person to provide information as the Department may reasonably require to determine whether that person is subject to M.G.L. c. 21, §§ 26 through 53 or to 314 CMR 3.00 or has violated the M.G.L. c. 21, §§ 26 through 53 or 314 CMR 3.00. The Department may require any person that it determines is subject to or in violation of M.G.L. c. 21, §§ 26 through 53 or 314 CMR 3.00 to apply for and obtain an individual permit, or if applicable, apply for and obtain coverage under a general permit under 314 CMR 3.06. Any person who discharges or proposes to discharge pollutants to surface waters of the Commonwealth may apply for an individual permit or, if applicable, apply to obtain coverage under a general permit under 314 CMR 3.06, by filing the appropriate application forms in accordance with 314 CMR 3.00 and 2.00.

(2) Discharges of pollutants requiring a permit under 314 CMR 3.03 shall include, but not be limited to:

(a) All point source discharges of pollutants to surface waters from publicly and privately owned treatment works, including any bypasses or overflows from such works, and from manufacturing, commercial, and mining activities and processes, whether treated or untreated.

3.03: continued

(b) Concentrated Aquatic Animal Production Facilities, as defined herein. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 314 CMR 3.15(1), or which the Department designates under 314 CMR 3.03(2)(c).

(c) Any warm or cold water aquatic animal production facility designated by the Department as a concentrated aquatic animal production facility upon a determination in accordance with 314 CMR 3.15 that it is a significant contributor of pollution to waters of the Commonwealth. In making this designation the Department shall consider the following factors:

1. The location and quality of the receiving waters of the Commonwealth;
2. The holding, feeding, and production capacities of the facility;
3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and
4. Other relevant factors.

A permit application shall not be required from a concentrated aquatic animal production facility designated under 314 CMR 3.03 until the Department has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

(d) Discharges into Aquaculture Projects as defined herein. "Aquaculture project" means a defined, managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

Designated Project Area means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(e) Silvicultural Point Sources as defined herein. "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Section 404 permit.

Rock Crushing and Gravel Washing Facilities means facilities which process crushed and broken stone, gravel and riprap (*See* 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

Log Sorting and Log Storage Facilities means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking) (*See* 40 CFR Part 429, Subpart I, including the effluent limitations guidelines).

(f) Concentrated Animal Feeding Operations, as defined in 40 CFR 122.23.

3.04 Other Activities Requiring a Permit

(1) No person shall engage in any other activity, other than those described in 314 CMR 3.03, which may reasonably result, directly or indirectly, in the discharge of pollutants into waters of the Commonwealth, without a currently valid permit from the Department, pursuant to 314 CMR 3.00 and 2.00, unless exempted in 314 CMR 3.05. Any person who engages or proposes to engage in such activities may apply for an individual permit or, if applicable, apply to obtain coverage under a general permit under 314 CMR 3.06, by filing the appropriate application forms in accordance with 314 CMR 3.00 and 2.00.

3.04: continued

- (2) Such other activities shall specifically include, but are not limited to:
- (a) Storm Water Discharges means a conveyance or system of conveyances (including pipes, conduits, ditches and channels) primarily used for collecting and conveying storm water runoff, but not including combined municipal sewer systems, and which discharges storm water from small municipal separate storm sewer systems that require coverage under a general permit issued by the Department pursuant to 314 CMR 3.06(11)(b).
 - (b) Case-by-case Designation of Storm Water Discharges. The Department may designate a conveyance or one or more systems of conveyances primarily used for collecting and conveying storm water runoff as a storm water discharge(s). This designation shall be made by the Department when:
 1. A Water Quality Management plan under of the the Clean Water Act, 33 U.S.C. 1251 *et seq.*, § 208, which contains requirements applicable to such discharge sources is approved, provided that any such discharge source is subject to designation as a storm water discharge only if it meets one or more of the designation criteria in 314 CMR 3.04(2)(b)2. through 5.; or
 2. The Department determines that a storm water discharge is or may be a significant contributor of pollution to the waters of the Commonwealth. In making this determination, the Department shall consider the following factors:
 - a. The location of the discharge with respect to waters of the Commonwealth;
 - b. The size of the discharge;
 - c. The quantity and nature of the pollutants reaching waters of the Commonwealth and the Massachusetts water quality standards applicable to such waters; and
 - d. Other relevant factors; or
 3. The Department determines that a discharge of storm water runoff is contaminated by contact with process wastes, raw materials, toxic pollutants, hazardous substances, or oil and grease, provided, however, that discharges in compliance with storm water management standards developed by the Department do not require a permit; or
 4. The Department determines that a discharge of storm water is subject to effluent limitations guidelines or toxic pollutant effluent standards; or
 5. The Department determines that a discharge of storm water is located in an industrial plant or in plant associated areas, if there is a potential for significant discharge of storm water contaminated by contact with process wastes, raw materials, toxic pollutants or hazardous substances. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or product loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots. Such discharges do not require an individual permit if the discharger has obtained coverage under an applicable general permit issued by EPA and/or by DEP pursuant to 314 CMR 3.06.
 - (c) Any person owning, operating or maintaining a "storm water discharge" is subject to the requirements of 314 CMR 3.04(1).
 - (d) Any person owning, operating or maintaining a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which does not constitute a "storm water discharge" is subject to the provisions of 314 CMR 3.05(7).

3.05: Exemptions

The following activities are exempt from the need to obtain an individual or general permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00:

- (1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the Commonwealth for the purpose of mineral or oil exploration or development.

3.05: continued

- (2) Discharges of dredged or fill material into waters of the Commonwealth which are regulated under 33 U.S.C. 1251 § 404, and are exempted from the need for a permit pursuant to 314 CMR 9.01(2).
- (3) Any introduction of sewage, industrial waste or other pollutants into publicly or privately owned treatment works by indirect dischargers if authorized pursuant to 314 CMR 7.00.
- (4) Any discharge in compliance with the written instructions of an On-Scene Coordinator pursuant to 33 CFR Part 153 - Control of Pollution by Oil and Hazardous Substances, Discharge Removal and 40 CFR Part 300, Subchapter J - Superfund, Emergency Planning, and Community Right-To-Know Programs, Subparts B and C, or if conducted as an Immediate Response Action in compliance with M.G.L. c. 21E and 310 CMR 40.0000, or if approved in writing by the Department, as necessary to abate, prevent, or eliminate an imminent hazard to the public health, safety, welfare or the environment.
- (5) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects or discharges from silvicultural point sources, as defined in 314 CMR 3.03.
- (6) Return flows from irrigated agriculture.
- (7) Any discharge of storm water that does not constitute a "storm water discharge".
- (8) Any discharge that results from a response action conducted or performed in compliance with the provisions of M.G.L. c. 21E and 310 CMR 40.0000; provided, however, that the discharge is not to an Outstanding Resource Water, as defined in the Massachusetts Surface Water Quality Standards, 314 CMR 4.04(3), unless a variance pursuant to 314 CMR 4.04(4) is granted by the Department for such a discharge.

3.06: General Permits

- (1) Department Authority to Issue General Permits. The Department may issue a general permit that regulates one or more categories of surface water discharges and covers multiple dischargers who have properly applied for coverage under the general permit. The Department may issue a general permit jointly with EPA or on its own. The scope of general permits that the Department may issue pursuant to 314 CMR 3.00 includes, but is not limited to, general permits for non-contact cooling water discharges, water treatment facility discharges, construction dewatering discharges, stormwater discharges from small MS4s, and storm water discharges associated with construction activities.
- (2) A general permit may be written to regulate one or more categories or subcategories of discharges or disposal practices or facilities, including within areas that correspond to geographic or political boundaries such as municipal or state political boundaries, sewer districts or sewer authorities, urbanized areas as designated by the federal Bureau of the Census, or any other appropriate division or combination of boundaries as determined by the Department. A general permit may exclude specified sources or areas from coverage.
- (3) General permits may be issued, renewed, modified and revoked by the Department in accordance with the applicable requirements of 314 CMR 2.00 and 3.00. A modified permit may be issued by the Department as an alternative general permit.
- (4) Applying for Coverage under a General Permit.
 - (a) Dischargers seeking coverage under a general permit shall submit to the Department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the general permit is not authorized to discharge under the general permit unless the general permit contains a provision that a notice of intent is not required or the Department notifies a discharger that it is covered by a general permit in accordance with 314 CMR 3.06(7). In general, the filing of a complete and timely notice of intent to be covered in accordance with 314 CMR 3.06 fulfills the requirements for permit applications for the purposes of 314 CMR 3.00.

3.06: continued

- (b) The Department will specify the content of the notice of intent in the general permit and require the submission of information deemed necessary by the Department for its adequate implementation and compliance oversight of the general permit, including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving waters.
 - (c) The Department will specify in the general permits the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the general permit.
 - (d) The Department will specify in the general permits whether a discharger that has submitted a complete and timely notice of intent and that is eligible for coverage under the general permit, is authorized to discharge in accordance with the general permit either upon receipt of the notice of intent by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Department.
- (5) The Department may require any person authorized to discharge under a general permit to apply for and obtain an individual surface water discharge permit or an alternative general surface water discharge permit in accordance with 314 CMR 3.00. Cases where an individual permit or alternative general permit may be required by the Department include, but are not limited to, the following:
- (a) The discharger is not in compliance with the conditions of the general permit; or
 - (b) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the discharge covered by the general permit; or
 - (c) More specific effluent limitations are established by the Department for discharges covered by the general permit; or
 - (d) Circumstances have changed since the time of the request to be covered under the general permit to the extent that the Department determines that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the discharge is necessary; or
 - (e) The discharger covered by the general permit is a significant contributor of pollutants, based on the Department's consideration of the location and size of the discharge and the quantity and nature of the pollutants discharged to waters of the Commonwealth.
- (6) Discharges other than POTWs, CSOs, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharge; the expected volume of the discharges; other means of identifying discharges covered by the general permit; and the estimated number of discharges to be covered by the permit. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.
- (7) The Department may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered to the Department. Alternatively, the Department may require such discharger to submit a complete notice of intent and obtain coverage under the general permit. A discharger so notified may request an individual permit from the Department pursuant to 314 CMR 3.00.
- (8) *In lieu* of requiring a discharger covered under a general permit to obtain an individual permit, the Department may direct such discharger to undertake additional control measures, BMPs or other actions to ensure compliance with the general permit, water quality standards, and/or to protect public health and the environment. The Department may exercise its authority to require the discharger to take the above actions by imposing a condition in the general permit to that effect, or by taking an enforcement action against the discharger, or by other means.

3.06: continued

(9) Where the Department requires a discharger covered under a general permit to apply for an individual permit or an alternative general permit, the Department will notify the permittee in writing that an individual permit or alternative general permit application is required, as applicable. The Department's notification will include a brief statement of the reasons for the Department's action, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual permit or alternative general permit as it applies to the individual permittee, coverage under the general permit shall automatically cease. The Department may grant additional time to submit the application upon request of the applicant. If the permittee fails to submit an individual permit application or alternative general permit application within the deadline set by the Department in its notification, the applicability of the general permit as applied to the discharger is automatically terminated at the end of the day specified by the Department for application submittal.

(10) Continuation of an Expired General Permit. In the event that the Department does not reissue a general permit prior to its expiration date, it will be administratively continued and remain in force and in effect as to any particular permittee if that permittee submits a new written request for coverage prior to the expiration of the general permit within the deadline specified by the Department. Once the general permit expires, the Department may, but is not obligated to, provide written notification of coverage under the general permit to any permittee who submits a written request for general permit coverage after the general permit's expiration date. Any permittee who was granted general permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

- (a) Reissuance of the general permit, at which time the permittee shall comply with the conditions of the new general permit to maintain its authorization to discharge; or
- (b) The permittee's submittal of a written notice of termination of general permit coverage to the Department; or
- (c) The Department's issuance of an individual permit or an alternative general permit for the permittee's discharge; or
- (d) A formal permit decision by the Department not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

(11) General Permits for Phase II Storm Water Discharges from Small MS4s.

(a) Discharges Authorized under the General Permit. The Department may issue a general permit for stormwater discharges from small municipal separate sewer systems (small MS4s), as provided in EPA's Phase II Storm Water Regulations at 40 CFR Part 122, Subpart B, and in 314 CMR 3.06(11)(b).

(b) Small MS4s.

1. Scope of Coverage. All operators of small MS4s located within the boundaries of an urbanized area of Massachusetts are required to obtain coverage under the general permit, unless the Department determines that such an automatically designated small MS4 meets the criteria for a waiver, as determined by the Department, or is subject to an individual surface water discharge permit issued pursuant to 314 CMR 3.00.

2. Additional Department Authority to Designate Other MS4s. The Department may designate an operator of a small MS4 located outside of an urbanized area as a regulated small MS4 if the Department determines that the system's discharges cause, or have the potential to cause, an adverse impact on water quality. Any such designation shall be based on a criteria developed by the Department that considers factors such as whether the discharge is to sensitive waters, high population density, high growth or growth potential, continuity to an urbanized area, whether the discharge is a significant contributor of pollutants to the receiving waters, and ineffective protection of water quality concerns by other programs. The Department shall apply its designation criteria, at a minimum, to all small MS4s located outside of an urbanized area serving a jurisdiction with a population of at least 10,000 and a population density of at least 1000 persons per square mile. The Department may also designate any small MS4 located outside of an urbanized area that contributes substantially to the pollutant loadings of a physically interconnected MS4 regulated by the general permit or an individual permit issued by the Department pursuant to 314 CMR 3.00.

3.06: continued

3. Waiver of Coverage for Certain Automatically Designated Small MS4s. The Department may waive the requirement that an automatically designated MS4 obtain coverage under the general permit in the following circumstances:

- a. the jurisdiction served by the system is less than 1,000 people, the system is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4, and if the small MS4 discharges any pollutants identified as a cause of impairment of any water body to which it discharges, storm water controls are not needed based on wasteload allocations that are part of a TMDL established by the Department that addresses the pollutant(s) of concern; or
- b. the jurisdiction served by the system is less than 10,000 people, an evaluation of the waters that receive a discharge from the system shows that storm water controls are not needed based on wasteload allocations that are part of a TMDL established by the Department that addresses the pollutant(s) of concern or an equivalent analysis, and the Department determines that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards.
- c. At least once every five years, the Department shall review any waivers that it granted to small MS4 operators to determine whether any information required for granting the waiver has changed.

4. Storm Water Management Program Requirements. An operator of a small MS4 covered under the general permit shall develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from its small MS4 to the maximum extent practicable to protect water quality, and to satisfy the water quality requirements of M.G.L. c. 21, §§ 26 through 53 and 314 CMR 3.00 and 4.00. An operator's storm water management program must include the minimum control measures described in 314 CMR 3.06(11)(b)5.a. through f., unless the operator applies for and is issued an individual surface water discharge permit pursuant to 314 CMR 3.00. If the Department determines that there is an existing qualifying state or local program that requires an operator to implement one or more of the minimum control measures, the Department may include conditions in the general permit that direct the operator to follow that program's requirements rather than the minimum control measure(s). For the purposes of 314 CMR 3.06(6), narrative effluent limitations requiring implementation of BMPs are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements, including reductions of pollutants to the maximum extent practicable, and to protect water quality. Implementation of BMPs consistent with the provisions of the storm water management program required pursuant to the provisions of 314 CMR 3.06(11)(b), including the proper maintenance of BMPs, generally constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." However, consistent with its authority under 314 CMR 3.06(8), the Department reserves the right to require an operator of a small MS4 to undertake additional control measures, BMPs and other actions beyond the scope of the operator's existing storm water management program to ensure compliance with the general permit, water quality standards, and/or to protect public health and the environment. The Department may also condition the general permit to require measurable verification of the effectiveness of BMPs and additional operational and maintenance activities associated with BMPs, and other control measures in the operator's storm water management program, including water quality monitoring.

5. Minimum Control Measures. The storm water management program of an operator of a small MS4 covered under the general permit shall include the following six minimum control measures:

- a. Public Education and Outreach. The operator shall implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff, such as ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. In addition, some of the educational materials or outreach programs should be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts.

3.06: continued

- b. Public Participation/Involvement. The operator shall, at a minimum, comply with applicable Department and other state and local public notice requirements when implementing a public involvement/participation program. The operator should include the public in developing, implementing and reviewing its storm water management program and the public participation process should make efforts to reach out and engage all economic and ethnic groups.
- c. Illicit Discharge Detection and Elimination. The operator shall develop, implement and enforce a program to detect and eliminate illicit discharges into its small MS4, including:
- (i) Develop, if not already completed, a storm sewer system map showing the locations of all outfalls and the names and location of all waters of the Commonwealth that receive discharges from those outfalls;
 - (ii) To the extent allowable under state and local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into its storm sewer system and implement appropriate enforcement procedures and actions;
 - (iii) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to its system;
 - (iv) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of wastes; and
 - (v) Address the following categories of non-storm water discharges or flows (*i.e.*, illicit discharges) only if the operator has identified them as significant contributors of pollutants to its small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed by the operator where they are identified as significant sources of pollutants to waters of the Commonwealth).
- d. Construction Site Runoff Control. The operator shall develop, implement and enforce a program to reduce pollutants in any storm water runoff to its small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than an acre shall be included in the operator's program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for storm water discharges associated with small construction activity in accordance with 314 CMR 3.06(11)(b)3., the operator is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The operator shall include the development and implementation of, at a minimum:
- (i) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state and local law;
 - (ii) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - (iii) Requirements for construction site operators to control wastes such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
 - (iv) Procedures for site plan review which incorporate consideration of potential water quality impacts;
 - (v) Procedures for receipt and consideration of information submitted by the public, and
 - (vi) Procedures for site inspection and enforcement of control measures.

3.06: continued

- e. Post-construction Site Runoff Control. The operator shall develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into its small MS4. The program shall ensure that controls are in place that would prevent or minimize water quality impacts. The operator shall also comply with the following requirements:
 - (i) Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;
 - (ii) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state and local law; and
 - (iii) Ensure adequate long-term operation and maintenance of BMPs.
 - f. Pollution Prevention/Good Housekeeping. The operator shall develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing storm water pollution from activities such as park and open space maintenance, new construction and land disturbances, and storm water system maintenance.
6. Ability to Share Responsibility to Implement the Minimum Control Measures. An operator of a small MS4 may rely on another entity to satisfy its general permit obligation to implement a minimum control measure if:
- a. The other entity, in fact, implements the control measure;
 - b. The particular control measure, or component thereof, is at least as stringent as the corresponding general permit requirement;
 - c. The other entity agrees to implement the control measure on behalf of the operator of the small MS4. In reports that the operator of the small MS4 is required to submit to the Department pursuant to 314 CMR 3.06(11)(b)7., the operator shall specify that it relies on another entity to satisfy some of its general permit obligations and shall identify such other entity; and
 - d. The operator of the small MS4 remains responsible for compliance with its general permit obligations if the other entity fails to implement the control measure, in whole or in part.
7. Evaluation and Assessment of the Storm Water Management Program.
- a. Evaluation. The operator of a small MS4 shall evaluate the compliance of its storm water management program with the general permit, the appropriateness of its best management practices, and progress towards achieving its identified measurable goals, in accordance with the general permit and Department requirements.
 - b. Recordkeeping. The operator of the small MS4 shall keep records required by the general permit for at least three years. The operator shall submit such records to the Department only when specifically asked to do so by the Department. The operator shall make its records, including a description of its storm water management program, available to the public at reasonable times during regular business hours, subject to the provisions of M.G.L. c. 66, § 10, the state public records law.
 - c. Reporting. Unless the operator of a small MS4 is relying on another entity to satisfy its general permit obligations under 314 CMR 3.06(11)(b)6., it shall submit annual reports to the Department during the first term of the general permit. For subsequent permit terms, the operator shall submit reports in years two and four, unless the Department requires more frequent reports. The report shall include:
 - (i) The status of compliance with the conditions of the general permit, an assessment of the appropriateness of its best management practices, and progress towards achieving its identified measurable goals, in accordance with the general permit and Department requirements;
 - (ii) The results of information collected and analyzed, including monitoring data, if any, during the reporting period;
 - (iii) A summary of storm water activities that the operator plans to undertake during the next reporting cycle;
 - (iv) A change in any identified BMPs or measurable goals for any of the minimum control measures; and

3.06: continued

(v) If applicable, notice that the operator is relying on another entity to satisfy some of its general permit obligations.

8. Compliance with More Stringent Effluent Limits. The operator shall comply with any more stringent effluent limitations, including permit requirements that modify, or are in addition to, the minimum control measures based on a TMDL or equivalent analysis approved by the Department. The Department may include in the general permit such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

9. Applying for Coverage under the Small MS4 General Permit. On or before March 10, 2003, operators of small MS4s regulated under the Phase II Storm Water Rule and 314 CMR 3.06(6)(b) shall submit to the Department a written notice of intent to be covered by the general permit. In its notice of intent, the operator shall identify and submit the following minimum information:

- a. The BMPs that the operator or another entity will implement for each of the storm water minimum controls identified in 314 CMR 3.06(11)(b)5.a. through f.;
- b. The measurable goals for each of the BMPs including, as appropriate, the months and years in which the operator will undertake required actions, including interim milestones and the frequency of action; and
- c. The person or persons responsible for implementing or coordinating the operator's storm water management program.

An operator of a regulated small MS4 is not covered by any general permit for Phase II Storm Water Discharges issued by the Department pursuant to 314 CMR 3.06(11)(b) unless the operator submits a timely and completed notice of intent to the Department; and the Department notifies the operator in writing that its MS4 is covered by the general permit. Operators of regulated MS4s who fail to submit a notice of intent to the Department and receive no written notification of permit coverage or those who are denied by the Department are not authorized under the general permit to engage in activities subject to 314 CMR 3.06(11)(b).

3.07: Restrictions on the Issuance of a Permit

The Department shall not issue a permit pursuant to 314 CMR 3.00:

- (1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 and the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the NPDES regulations at 40 CFR Part 122.
- (2) When the applicant is required to obtain a State or other appropriate certification under 33 U.S.C. 1251 § 401 and that certification has not been obtained or waived;
- (3) Where the Regional Administrator has objected to issuance of the permit pursuant to 40 CFR 123.44;
- (4) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;
- (5) When, in the judgment of the Secretary of the Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
- (6) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- (7) For any discharge inconsistent with a plan or plan amendment approved under 33 U.S.C. 1251 § 208(b) or 303(e) or M.G.L. c. 21, § 27(10); or
- (8) For any discharge to the territorial sea, in the following circumstances:
 - (a) Before the promulgation of guidelines under 33 U.S.C. 1251 § 403(c) (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Department determines permit issuance to be in the public interest; or

3.07: continued

- (b) After promulgation of guidelines under 33 U.S.C. 1251 § 403(c) when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

3.08: Effect of a Permit

- (1) Issuance of a permit under 314 CMR 3.00 and 2.00 shall be deemed to allow, to the extent specified in the permit and 314 CMR 3.08, the permittee to discharge pollutants to waters of the Commonwealth, to construct, install, modify, operate and maintain an outlet for such discharge, together with any treatment works required to meet effluent limitations specified in the permit for such discharge in accordance with plans and specifications approved in writing by the Department.
- (2) Except for any toxic effluent standards and prohibitions imposed under 33 U.S.C. 1251 § 307, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with 33 U.S.C. 1251 §§ 301, 302, 306, 307, 318, 403, and 405.

3.09: Continuation of an Expiring Permit

- (1) Except as provided in 314 CMR 3.06(10), the conditions of a permit continue in force under M.G.L. c. 30A, § 13 beyond the expiration date if:
 - (a) the permittee has made timely application for renewal or a new permit pursuant to 314 CMR 3.10(3) which is a complete application under 314 CMR 3.10(4); and
 - (b) the Department does not renew or issue a new permit with an effective date under 314 CMR 2.08 on or before the expiration date of the previous permit.
- (2) Permits continued under 314 CMR 3.09 remain fully effective and enforceable.
- (3) An EPA-issued permit does not continue in force beyond its expiration date under Federal law, if at that time, the Department is the permitting authority, unless the permittee has complied with the provisions of 314 CMR 3.09(1), otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the new permit issued by the Department.
- (4) Any timely application for renewal of a permit filed with the EPA pursuant to 40 CFR 122.21(d) prior to April 25, 2003 shall be deemed to have been filed with the Department pursuant to 314 CMR 3.09.

3.10: Application for a Permit

- (1) Duty to Apply and to Provide Information Requested by the Department in the Application. Any person required to obtain a permit pursuant to 314 CMR 3.03, 3.04 or 3.06 shall complete and submit the appropriate application form(s). As part of an application for an individual or general permit, the Department may require the applicant to provide information and analyses as the Department may reasonably require to determine whether such applicant meets the requirements of 314 CMR 3.00 and 4.00, including, but not limited to, pollutant loading and/or water quality analyses applicable to the discharge location or to area(s) potentially impacted by the discharge.
- (2) Who must Apply. Except as provided in 314 CMR 3.06, the owner of the treatment works or activity resulting in a discharge of pollutants shall apply for a permit.
- (3) Time to Apply.
 - (a) Except as provided in 314 CMR 6.06, any person required to obtain a permit pursuant to 314 CMR 3.03 or 3.04, and who does not have a currently effective permit shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Department. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay.

3.10: continued

- (b) Except as provided in 314 CMR 3.06, any person with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Department.
- (4) Completeness. The Department shall not issue a permit before receiving a complete application as required under 314 CMR 2.03(2).
- (5) Requests for Variances.
- (a) Variance Requests by Non-POTWs. A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in 314 CMR 3.10(5):
1. Fundamentally Different Factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guidelines were based, shall be made by the close of the public comment period under 314 CMR 2.06. The request shall comply with the requirements of applicable regulations promulgated by EPA (*see* 40 CFR 125, Subpart D).
 2. Thermal Discharges. A request for a variance under 33 U.S.C. 1251 § 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under 314 CMR 3.10, except that if thermal effluent limitations are established under 33 U.S.C. § 402(a)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under 314 CMR 2.06. The request shall comply with the requirements of 314 CMR 3.12.
 3. Non-conventional Pollutants. A request for a variance under 33 U.S.C. 1251 § 301(g) from certain effluent limitation guidelines applicable to non-conventional pollutants shall be made no later than the close of the public comment period under 314 CMR 2.06. In addition, an initial request for the variance must have been filed with EPA within 270 days after promulgation of the applicable effluent limitation guideline. These requests shall comply with the requirements of applicable regulations promulgated by EPA [*see* 40 CFR 122.21(1)(2).]
- (b) Variance Requests by POTWs. A discharger which is a POTW may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provision as specified 314 CMR 3.10(5):
1. Discharges into Marine Waters. A request for a modification under 33 U.S.C. 1251 § 301(h) of requirements of 33 U.S.C. 1251 § 301(1)(B) for discharges into marine waters must be filed in compliance with applicable regulations promulgated by EPA (*see* 40 CFR 125, Subpart H).
 2. Requests for a modification based on the existence of combined sewers under 314 CMR 3.11(12)(a)2. or the presence of an industrial discharge meeting the criteria of 314 CMR 3.11(12)(a)2. shall be filed by the close of the public comment period under 314 CMR 2.06.

3.11: Permit Conditions

- (1) Standard Conditions. The conditions in 314 CMR 3.19 apply to every permit issued under 314 CMR 3.00, whether or not expressly incorporated into the permit.
- (2) Special Conditions.
- (a) In addition to conditions applicable to all permits [314 CMR 3.11(1) and 3.19], the Department shall establish special conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 and the Clean Water Act, 33 U.S.C. 1251 *et seq*, and the NPDES regulations at 40 CFR Part 122.
- The Department's authority under 314 CMR 3.11(2) includes, but is not limited to, establishing special conditions in an individual or general permit in the following areas:
1. effluent and/or pollutant loading limitations and standards, including as applied to nutrients;
 2. conditions to ensure compliance with any TMDL established by the Department for receiving waters;

3.11: continued

3. limitations on the amount of flow authorized to be discharged under the permit;
 4. the development, implementation and enforcement of BMPs and other control measures;
 5. monitoring requirements and other means of verifying the compliance of the discharge with a permit;
 6. requirements to conduct pollutant loading and/or water quality analyses, comprehensive wastewater management planning, or other technical evaluations during the term of one or more permits;
 7. financial security requirements to fund the operation, maintenance, and the immediate and/or long-term repair or replacement of permitted facilities or activities;
 8. the duration of the permit;
 9. recordkeeping and reporting requirements; and
 10. where applicable, schedules of compliance
- (b) In establishing effluent limitations, the Department shall apply the more stringent of the following:
1. Water quality based effluent limitations under 314 CMR 3.11(3) and (7); or
 2. Technology based effluent limitations under 314 CMR 3.11(4), (5), (6) and (7).

(3) Water quality based effluent limitations. As a minimum, all permits shall contain limitations which are adequate to assure the attainment and maintenance of the water quality standards of the receiving waters as assigned in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00. In establishing water quality based effluent limitations, the Department shall consider natural background conditions, existing discharges, the protection of existing downstream uses, and the attainment and maintenance of beneficial uses in downstream waters. Toward this end, the Department may provide a reasonable margin of safety to account for any lack of knowledge concerning the relationship between the pollutants being discharged and their impact on the quality of the receiving waters. Water quality based limits may be established on a seasonal basis at the discretion of the Department.

(4) Technology based effluent limitations. Limitations more stringent than those necessary to satisfy water quality standards shall be applied in accordance with the applicable provisions of 314 CMR 3.11(5) and (6).

(5) Technology based effluent limitations for POTWs. Except as provided in 314 CMR 3.11(12)(a), technology based limitations for discharges from POTWs shall be the more stringent of the criteria in 314 CMR 3.11(5)(a) and (b), or, if applicable, based on the criteria in 314 CMR 3.11(5)(c):

- (a) Secondary treatment, defined as that process or group of process capable of removing from untreated wastewater a minimum of 85% of the five day biochemical oxygen demand and suspended solids, and virtually all floating and settleable solids, followed by disinfection. Disinfection of treated effluent may be discontinued at the discretion of the Department. Limitations defining secondary treatment may be expressed in terms of concentration as well as mass.
- (b) Applicable limitations and standards promulgated by EPA pursuant to 33 U.S.C. 1251 § 304(d)(1) to comply with the requirements of 33 U.S.C. 1251 § 301(b)(1).
- (c) The Department may establish technology based effluent limitations for nutrients such as nitrogen and phosphorus based on relevant EPA technology guidelines or a Department determination of the highest and best practicable treatment technology necessary to ensure compliance with 314 CMR 4.04(5) and 4.05(5)(c).

(6) Technology based effluent limitations for non-POTWs. Except as provided in 314 CMR 3.11(12)(b), technology based limitations for discharges from non-POTWs shall be the most stringent of the criteria in 314 CMR 3.11(6)(a) and (b), or, if applicable, based on the criteria in 314 CMR 3.11(6)(c):

- (a) Applicable limitations and standards promulgated by EPA pursuant to 33 U.S.C. 1251 §§ 304, 306, 307, 316, 318, and 405 to comply with the requirements of 33 U.S.C. 1251 § 301.

3.11: continued

- (b) Limitations developed on a case-by-case basis which, in the Department's best professional judgment, define the appropriate level of control set forth in the The Clean Water Act, 33 U.S.C. 1251 *et seq*, for the category of discharger or class of pollutants discharged. In defining the appropriate level of control hereunder, the Department will consider any draft or promulgated EPA effluent limitation guidelines, draft or proposed EPA development documents or guidance, any available state guidance, or any technology or process which has been demonstrated to be achievable in the experience of the Department for the class or category of discharger.
- (c) The Department may establish technology based effluent limitations for non-POTWs that are not classified as industrial by EPA or the Department for nutrients such as nitrogen and phosphorus based on relevant EPA technology guidelines or a Department determination of the highest and best practicable treatment technology necessary to ensure compliance with 314 CMR 4.04(5) and 4.05(5)(c).
- (d) In the case of reissued permits, limitations which are at least as stringent as those of the previous permit, unless the effluent limitations imposed by the previously issued permit are more stringent than subsequently promulgated effluent guidelines and one or more of the following conditions applies:
1. The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines).
 2. The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 314 CMR 3.13.
- (7) Calculating Permit Conditions.
- (a) The Department may express effluent limitations and/or other pollutant loading limitations established under 314 CMR 3.11 by means of any combination of physical, chemical, or biological terms (including bioassay), control measures, BMPs, and other actions, which, in the judgment of the Department, properly define the level of control applicable to the discharge. Pollutants may be limited directly or through limitations on other indicator pollutants which, in the judgment of the Department, will provide the required level of control.
- (b) In order to ensure that dilution will not be used as a substitute for treatment, limitations will be based on mass wherever feasible. Pollutants limited in terms of mass may be limited additionally in terms of other units, and the permit shall require the permittee to comply with both limitations.
- (c) Effluent limitations may be imposed on internal waste streams before mixing with other waste streams or cooling water streams when effluent limitations imposed at the point of discharge are impractical or infeasible. Limits on internal waste streams will be imposed only when the fact sheet under 314 CMR 2.05 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impractical, or the interferences among pollutants at the point of discharge would make detection or analysis impractical.
- (8) Duration of Permits. Permits shall be effective for a fixed term not to exceed five years. The Department may issue any permit for a lesser duration.
- (9) Monitoring, Recordkeeping and Reporting Requirements.
- (a) Each permit shall contain monitoring requirements to assure compliance with permit limitations and conditions. The type, intervals, and frequency of monitoring shall be sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring. Monitoring requirements may include the mass (or other measurement specified in the permit) for each pollutant limited in the permit, the volume of effluent discharged from each outfall, and other measurements as appropriate (including biological monitoring methods when appropriate). Monitoring shall be conducted in accordance with the provisions of 314 CMR 3.19(4) and (10). Permittees shall maintain records of all monitoring activities in accordance with 314 CMR 3.19(11).

3.11: continued

(b) Each permit shall contain requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 314 CMR 3.19(20)(e) shall be listed in the permit.

(10) Schedule of Compliance.

(a) A permit may, when appropriate, specify a schedule leading to compliance with the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 and The Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the NPDES regulations at 40 CFR Part 122. Any such schedule shall require compliance as soon as possible, but not later than the applicable statutory deadline under 33 U.S.C. 1251 § 301(b), unless modified in accordance with the provisions of 33 U.S.C. 1251 § 301(i) or (k).

Each schedule shall set forth dates to accomplish interim requirements leading toward compliance. Beginning with the date of permit issuance, the time between interim dates shall not exceed one year. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(b) The first permit issued for a new source shall not contain a schedule of compliance. No new source or new or recommencing discharge shall begin operations or discharge prior to installation and operation of all treatment works necessary to comply with the effluent limitations established in the permit.

(11) Other Conditions. In addition to the conditions established under 314 CMR 3.11(1) through (10), a permit may include special conditions as follows:

(a) Any requirements established under a state or other appropriate certification under 33 U.S.C. 1251 § 401.

(b) Requirements for POTWs to comply with pretreatment provisions under 314 CMR 12.00 including:

1. The identification, in terms of character and volume of pollutants, of any significant indirect discharge into the POTW subject to the prohibitions and standards of 314 CMR 12.08;
2. The establishment of a POTW pretreatment program in accordance with 314 CMR 12.10, including any necessary schedule of compliance for adoption of the program;
3. The incorporation of an approved POTW pretreatment program in the permit; and
4. The submittal by a POTW of the reports required by 314 CMR 12.10(3).

(c) Requirements to control or abate the discharge of pollutants through the application of best management practices when:

1. Authorized under of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, § 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities;
2. Numerical effluent limitations are infeasible; or
3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of The Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 or The Clean Water Act, 33 U.S.C. 1251 *et seq.*

(d) Requirements applicable to the management of hazardous wastes for treatment works subject to the provisions of 314 CMR 8.00.

(e) Requirements to monitor, record and report the quality of receiving waters.

(f) Requirements to prepare and submit monthly operating reports under 314 CMR 12.07.

(g) Requirements imposed in grants made by EPA or the Department to POTWs under 33 U.S.C. 1251 §§ 201 and 204 or M.G.L. c. 21 §§ 30A and 33 which are reasonably necessary for the achievement of effluent limitations established pursuant to 314 CMR 3.11(2)(b).

(h) Requirements governing the disposal of sludge from treatment works.

(i) A requirement to comply with applicable regulations of the United States Coast Guard at 33 CFR Part 159, when a permit is issued to a facility that may operate at certain times as a means of transportation over water.

(j) Requirements that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

3.11: continued

(k) Requirements for the periodic submission of reports regarding sewer connections authorized for the discharge of fewer than 15,000 gallons per day of sewage to a treatment works.

(12) Determination of Variance. The Department shall evaluate variances from technology based effluent limitations as follows:

(a) For POTWs:

1. If a POTW discharging to coastal waters obtains a waiver from secondary treatment from EPA under 33 U.S.C. 1251 § 301(h), the permit shall contain, at a minimum, effluent limitations based on primary treatment with disinfection.
2. Treatment works which receive flows from combined sewers may not be capable of meeting the percentage removal requirements of 314 CMR 3.11(5) during wet weather. For such treatment works, the Department shall decide on a case-by-case basis whether any attainable percentage removal level can be defined, and if so, what that level should be.
3. Concentrations of five day biochemical oxygen demand and suspended solids established under 314 CMR 3.11(5) may be increased where there is a major industrial discharger to the POTW, provided that:
 - a. The permitted discharge of such pollutants, attributable to the industrial category, would not be greater than that which would be permitted under 33 U.S.C. 1251 § 301(b)(1)(a)(i) or 306 if such industrial category were to discharge directly to waters of the Commonwealth; and
 - b. The flow or loading of such pollutants introduced by the industrial category exceeds ten percent of the design flow or loading of the publicly owned treatment works. When such an adjustment is made, the values for biochemical oxygen demand or suspended solids shall be adjusted proportionally.

(b) For Other Dischargers:

1. Requests for variances based on the presence of fundamentally different factors from those on which effluent limitations guidelines were based will be reviewed by the Department and forwarded to the Regional Administrator of EPA with a written concurrence, submitted to EPA without a recommendation, or denied. If approved by EPA, the Department may incorporate the variance in a draft permit.
2. In accordance with 33 U.S.C. 1251 § 316(a), thermal discharge effluent limitations may be less stringent than those required by applicable technology based standards and limitations if the discharger demonstrates to the satisfaction of the Department that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. Alternative effluent limitations may be established for the thermal discharge in accordance with the provisions of 314 CMR 3.12. In no event shall established thermal effluent limitations be less stringent than those necessary to meet the applicable water quality standards under 314 CMR 4.00.
3. Requests for variances for non-conventional pollutants under 33 U.S.C. 1251 § 301(g) will be reviewed by the Department and forwarded to the Regional Administrator of EPA with a written concurrence, submitted to EPA without a recommendation, or denied. If approved by EPA, the Department may incorporate the variance in a draft permit.

3.12: Variances for Thermal Discharges

(1) Definitions. For the purpose of 314 CMR 3.12:

- (a) Alternative Effluent Limitations means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 33 U.S.C. 1251 § 316(a) and 314 CMR 3.12.
- (b) Representative Important Species means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

3.12: continued

(c) The term Balanced, Indigenous Community is synonymous with the term Balanced Indigenous Population in 33 U.S.C. 1251 and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with 33 U.S.C. 1251 § 301(b)(2), and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 33 U.S.C. 1251 § 316(a).

(2) Application Procedures.

(a) Any initial application for a variance under 314 CMR 3.12 shall include the following early screening information:

1. A description of the alternative effluent limitation requested;
2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;
3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and
4. Such data and information as may be available to assist the Department in selecting the appropriate representative important species.

(b) After submitting the early screening information under 314 CMR 3.12(2)(a), the discharger shall consult with the Department at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Department's approval a detailed plan of study which the discharger will undertake to support its 33 U.S.C. 1251 § 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. After the discharger submits its detailed plan of study, the Department shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Department subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a 33 U.S.C. 1251 § 316(a) variance shall include only such information described in 314 CMR 3.12(2)(a) and (b) as the Department requests after receipt of the permit application.

(d) The Department shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a 33 U.S.C. 1251 § 316(a) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under 314 CMR 3.12(2)(a). This request shall be granted or denied at the discretion of the Department.

(g) At the expiration of the permit, any discharger holding a 33 U.S.C. 1251 § 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.

3.12: continued

(3) Criteria for Determination of Alternative Effluent Limitations for Thermal Discharges.

- (a) The discharger must demonstrate to the satisfaction of the Department that applicable standards and limitations for thermal discharges are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.
- (b) In determining whether or not the protection and propagation of the affected species will be assured, the Department may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under 33 U.S.C. 1251 § 304(a), or any other information the Department deems relevant.
- (c) 1. Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:
 - a. That no appreciable harm has resulted from the thermal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources on a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made); or
 - b. That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.
- 2. In determining whether or not prior appreciable harm has occurred, the Department shall consider the length of time the applicant has been discharging and the nature of the discharge.

3.13: Modification, Suspension, Revocation and Renewal of Permits

- (1) As provided in M.G.L. c. 21, § 43(10), the Department may propose and determine to modify, suspend or revoke any outstanding permit, in whole or in part, for cause including, but not limited to, violation of any permit term, obtaining a permit by misrepresentation or failure to disclose fully all relevant facts or any change in or discovery of conditions that calls for reduction or discontinuance of the authorized discharge or activity. The Department may also modify a permit at the request of the permittee upon a showing, satisfactory to the Department, that the requested modification is appropriate in view of circumstances for which the permittee is not at fault. The Department's authority to require any person covered under a general permit to obtain an individual permit or to be covered under an alternative general permit is set forth in 314 CMR 3.06(5).
- (2) The modification, suspension, revocation or renewal of a permit shall be processed in accordance with the provisions of 314 CMR 2.11. In processing a permit renewal, the Department may revise or withdraw a draft permit renewal, either on its own or in response to comments by EPA, the permittee or the public, prior to the effective date of the permit renewal as determined in accordance with 314 CMR 2.08. In a case where the Department withdraws a draft permit renewal, the existing permit will remain in effect in accordance with 314 CMR 3.09(1).
- (3) Minor Modifications of Permits. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in 314 CMR 3.13(3), without following the procedures of 314 CMR 2.00. Any permit modification not processed as a minor modification under 314 CMR 3.13 must be made for cause and in accordance with the draft permit and public notice requirements of 314 CMR 2.00. Minor modifications may only:
 - (a) Correct typographical errors;
 - (b) Require more frequent monitoring or reporting by the permittee;

3.13: continued

- (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
- (d) Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; or
- (e) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

3.14: Transfer of Permits

- (1) RCRA Facilities. Any permit which authorizes the operation of a RCRA facility subject to the requirements of 314 CMR 8.07 shall be valid only for the person to whom it is issued and may not be transferred. Operation by an owner or operator other than those named in the permit shall be a violation of 314 CMR 3.00 and a basis for revocation of the permit, or for other enforcement action.
- (2) Transfers by Modification. Except as provided in 314 CMR 3.14(1) and (3), and 314 CMR 3.06, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under 314 CMR 3.13(1) and (2), or a minor modification made under 314 CMR 3.13(3)(d) to identify the new permittee.
- (3) Automatic Transfers. As an alternative to transfers under 314 CMR 3.14(2), any permit may be automatically transferred to a new permittee if:
 - (a) The current permittee notifies the Department at least 30 days in advance of the proposed transfer date in 314 CMR 3.14(3)(b).
 - (b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - (c) The Department does not notify the existing permittee and the proposed new permittee of the Department's intent to modify or revoke and reissue the permit. A modification under 314 CMR 3.14(3) may also be a minor modification under 314 CMR 3.13(3). If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in 314 CMR 3.14(3)(b).

3.15: Signatories to Permit Applications and Reports

- (1) Applications. All permit applications shall be signed as follows:
 - (a) For a corporation: by a responsible corporate officer. For the purpose of 314 CMR 3.15, a responsible corporate officer means:
 - 1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or
 - 2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - (c) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of 314 CMR 3.15, a principal executive officer of a Federal agency includes:
 - 1. The chief executive officer of the agency, or
 - 2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

3.15: continued

- (2) Reports. All reports required by permits and other information requested by the Department shall be signed by a person described in 314 CMR 3.15(1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- (a) The authorization is made in writing by a person described in 314 CMR 3.15(1);
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility; and
 - (c) The written authorization is submitted to the Department.
- (3) Certification. Any person signing a document under 314 CMR 3.15(1) or (2) shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3.16: Appendix A - Criteria for Determining a Concentrated Aquatic Production Facility

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of 314 CMR 3.03(2)(c) if it contains, grows, or holds aquatic animals in either of the following categories:

- (1) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:
 - (a) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
 - (b) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
- (2) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other-similar structures which discharge at least 30 days per year, but does not include:
 - (a) Closed ponds which discharge only during periods of excess runoff; or
 - (b) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the Salmonidae family of fish; e.g. trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrarchidae and Cyprinidae families of fish: e.g., respectively, catfish, sunfish and minnows.

3.17: Appendix B - Toxic Pollutants

- (1) Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS).
 - (a) Volatiles.

1V acrolein	13V dichlorodifluoromethane
2V acrylonitrile	14V 1,1-dichloroethane
3V benzene	15V 1,2-dichloroethane
4V bis (chloromethyl) ether	16V 1,1-dichloroethylene
5V bromoform	17V 1,2-dichloropropane
6V carbon tetrachloride	18V 1,2-dichloropropylene
7V chlorobenzene	19V ethylbenzene
8V chlorodibromomethane	20V methyl bromide
9V chloroethane	21V methyl chloride
10V 2-chloroethylvinyl ether	22V methylene chloride
11V chloroform	23V 1,1,2,2-tetrachloroethane
12V dichlorobromomethane	24V tetrachloroethylene

3.17: continued

25V toluene
 26V 1,2-trans-dichloroethylene
 27V 1,1,1-trichloroethane
 28V 1,1,2-trichloroethane

29V trichloroethylene
 30V trichlorofluoromethane
 31V vinyl chloride

(b) Acid Compounds.

1A 2-chlorophenol
 2A 2,4-dichlorophenol
 3A 2,4-dimethylphenol
 4A 4,6-dinitro-o-cresol
 5A 2,4-dinitrophenol
 6A 2-nitrophenol

7A 4-nitrophenol
 8A p-chloro-m-cresol
 9A pentachlorophenol
 10A phenol
 11A 2,4,6-trichlorophenol

(c) Base/Neutral.

1B acenaphthene
 2B acenaphthylene
 3B anthracene
 4B benzidine
 5B benzo(a)anthracene
 6B benzo(a)pyrene
 7B 3,4-benzofluoranthene
 8B benzo(ghi)perylene
 9B benzo(k)fluoranthene
 10B bis(2-chloroethoxy)methane
 11B bis(2-chloroethyl)ether
 12B bis(2-chloroisopropyl)ether
 13B bis(2-ethylhexyl)phthalat
 14B 4-bromophenyl phenyl ether
 15B butylbenzyl phthalate
 16B 2-chloronaphthalene
 17B 4-chlorophenyl phenyl ether
 18B chrysene
 19B dibenzo(a,h)anthracene
 20B 1,2-dichlorobenzene
 21B 1,3-dichlorobenzene
 22B 1,4-dichlorobenzene
 23B 3,3'-dichlorobenzidine
 24B diethyl phthalate

25B dimethyl phthalate
 26B di-n-butyl phthalate
 27B 2,4-dinitrotoluene
 28B 2,6-dinitrotoluene
 29B di-n-octyl phthalate
 30B 1,2-diphenylhydrazine
 (as azobenzene)
 31B fluoranthene
 32B fluorene
 33B hexachlorobenzene
 34B hexachlorobutadiene
 35B hexachlorocyclopentadiene
 36B hexachloroethane
 37B indeno(1,2,3-cd)pyrene
 38B isophorone
 39B naphthalene
 40B nitrobenzene
 41B N-nitrosodimethylamine
 42B N-nitrosodi-n-propylamine
 43B N-nitrosodiphenylamine
 44B phenanthrene
 45B pyrene
 46B 1,2,4-trichlorobenzene

(d) Pesticides.

1P aldrin
 2P alpha-BHC
 3P beta-BHC
 4P gamma-BHC
 5P delta-BHC
 6P chlordane
 7P 4,4'-DDT
 8P 4,4'-DDE
 9P 4,4'-DDD
 10P dieldrin
 11P alpha-endosulfan
 12P beta-endosulfan
 13P endosulfan sulfate

14P endrin
 15P endrin aldehyde
 16P heptachlor
 17P heptachlor epoxide
 18P PCB-1242
 19P PCB-1254
 20P PCB-1221
 21P PCB-1232
 22P PCB-1248
 23P PCB-1260
 24P PCB-1016
 25P toxaphene

3.17: continued

(2) Other Toxic Pollutants: Metals, Asbestos, Cyanide and Total Phenols.

Antimony, Total	Nickel, Total
Arsenic, Total	Selenium, Total
Beryllium, Total	Silver, Total
Cadmium, Total	Thallium, Total
Chromium, Total	Zinc, Total
Copper, Total	Asbestos
Lead, Total	Cyanide, Total
Mercury, Total	Phenols, Total

3.19: Standard Permit Conditions

Except as provided in 314 CMR 3.06, the following standard conditions apply to all individual and general permits:

(1) No discharge authorized in the permit shall result in a violation of the Massachusetts Surface Water Quality Standards (314 CMR 4.00) or the Massachusetts Ground Water Quality Standards (314 CMR 6.00), or any amendments thereto. Upon promulgation of any amended standard, this permit may be revised or amended in accordance with such standard and 314 CMR 2.11 and 3.13 or 5.12. For purposes of determining compliance with ground water quality standards, a violation of the ground water quality standards, and the discharge permit, will be determined to occur when any parameter measured in any downgradient well exceeds the applicable criteria listed in 314 CMR 6.06. In those cases where it is shown that a measured parameter exceeds the applicable criteria listed in 314 CMR 6.06 at the upgradient monitoring well, a violation of the ground water quality standards and the discharge permit will be determined to occur when it is shown that a measured parameter in any downgradient well exceeds the level of that same measured parameter in the upgradient well for the same sampling period.

(2) Duty to Comply. The permittee shall comply at all times with the terms and conditions of the permit, any conditions included in a related water quality certification issued by the Department, 314 CMR, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and all other applicable state and federal statutes and regulations.

(3) Standards and Prohibitions for Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under 33 U.S.C. 1251 § 307(a) for toxic pollutants within the time provided in 40 CFR Part 301, even if the permit has not yet been modified to incorporate the requirement.

(4) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and equipment installed or used to achieve compliance with the terms and conditions of the permit, and in accordance with 314 CMR 12.00.

(5) Duty to Halt or Reduce Activity. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or discharges or both until the facility is restored or an alternative method of treatment is provided. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(6) Power Failure. In order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either:

- (a) provide an alternative power source sufficient to operate the wastewater control facilities; or
- (b) halt, reduce or otherwise control production and/or all discharges upon the reduction, loss, or failure of the primary source of power to the wastewater control facilities.

3.19: continued

(7) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any adverse impact on human health or the environment resulting from non-compliance with the permit.

(8) Duty to Provide Information. The permittee shall furnish to the Department within a reasonable time any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine whether the permittee is complying with the terms and conditions of the permit.

(9) Inspection and Entry. The permittee shall allow the Department or its authorized representatives to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records required by the permit are kept;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
- (c) Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the permit; and
- (d) Sample or monitor at reasonable times for the purpose of determining compliance with the terms and conditions of the permit.

(10) Monitoring. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures are specified in the permit.

(11) Recordkeeping. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and all records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurement;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and
- (f) The results of such analyses.

(12) Prohibition of Bypassing. Except as provided in 314 CMR 3.19(13), bypassing is prohibited, and the Department may take enforcement action against a permittee for bypassing, unless the discharge is to a surface water and:

- (a) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (c) The permittee submitted notice of the bypass to the Department:
 - 1. In the event of an anticipated bypass at least ten days in advance, if possible; or
 - 2. In the event of an unanticipated bypass as soon as the permittee has knowledge of the bypass and no later than 24 hours after its first occurrence.

(13) Bypass not Exceeding Limitations. The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if necessary for the performance of essential maintenance or to assure efficient operation of treatment facilities.

3.19: continued

(14) Permit Actions. The permit may be modified, suspended, or revoked for cause. The filing of a request by the permittee for a permit modification, reissuance, or termination, or a notification of planned changes or anticipated non-compliance does not stay any permit condition.

(15) Duty to Reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Department.

(16) Property Rights. The permit does not convey any property rights of any sort or any exclusive privilege.

(17) Other Laws. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

(18) Oil and Hazardous Substance Liability. Nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under 33 U.S.C. 1251 § 311, and M.G.L. c. 21E.

(19) Removed Substances. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed in a manner consistent with applicable Federal and State laws and regulations including, but not limited to, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 and The Clean Water Act, 33 U.S.C. 1251 *et seq*, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, and the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq*. 310 CMR 19.00 and 30.000, and other applicable regulations.

(20) Reporting Requirements.

(a) Monitoring Reports. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) at the intervals specified elsewhere in the permit. If the permittee monitors any pollutant more frequently than required by the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(b) Compliance Schedules. Reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(c) Planned Changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility or activity which could significantly change the nature or increase the quantity of pollutants discharged. Unless and until the permit is modified, any new or increased discharge in excess of permit limits or not specifically authorized by the permit constitutes a violation.

(d) Anticipated Non-compliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in non-compliance with permit requirements.

(e) 24 hour Reporting. The permittee shall report any non-compliance which may endanger public health or the environment. Any information shall be provided orally to the appropriate DEP office within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the non-compliance, including exact dates and times, and if the non-compliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the non-compliance.

The following shall be included as information which must be reported within 24 hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit.
2. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

3.19: continued

(f) Other Non-compliance. The permittee shall report all instances of non-compliance not reported under 314 CMR 3.19(20)(a), (b), or (e) at the time monitoring reports are submitted. The reports shall contain the information listed in 314 CMR 3.19(20)(e).

(g) Toxics. All manufacturing, commercial, mining, or silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant listed in 314 CMR 3.17 which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. 100 micrograms per liter (100 ug/l);

b. 200 micrograms per liter (200 ug/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

2. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

(h) Indirect Dischargers. All Publicly Owned Treatment Works shall provide adequate notice to the Department of the following:

1. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to 33 U.S.C. 1251 § 301 or 306 if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of 314 CMR 3.00, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(i) Information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(21) Signatory Requirement. All applications, reports, or information submitted to the Department shall be signed and certified in accordance with 314 CMR 3.15 and 5.14.

(22) Severability. The provisions of the permit are severable, and if any provision of the permit, or the application of any provision of the permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of the permit, shall not be affected thereby.

(23) Reopener Clause. The Department reserves the right to make appropriate revisions to the permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 or The Clean Water Act, 33 U.S.C. 1251 *et seq* in order to bring all discharges into compliance with said statutes.

(24) Approval of Plans and Specifications for Treatment Works. All discharges and associated treatment works authorized herein shall be consistent with the terms and conditions of this permit and the approved plans and specifications. Any modification to the approved treatment works shall require written approval of the Department.

(25) Transfer of Permits.

(a) RCRA Facilities. Any permit which authorizes the operation of a RCRA facility which is subject to the requirements of 314 CMR 8.07 shall be valid only for the person to whom it is issued and may not be transferred.

(b) Transfers by Modification. Except as provided in 314 CMR 3.19(25)(a) and (c), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued or a minor modification made to identify the new permittee.

3.19: continued

(c) Automatic Transfers. As an alternative to transfers under 314 CMR 3.19(25)(b), any permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date in 314 CMR 3.19(25)(c)2.
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
3. The Department does not notify the existing permittee and the proposed new permittee of the Department's intent to modify or revoke and reissue the permit. A modification under 314 CMR 3.19(25) may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in 314 CMR 3.19(25)(c)2.

(26) Permit Fees.

(a) Any permittee, other than a public entity, required to obtain a surface water or ground water discharge permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00 and 5.00, shall be required annually to obtain an inspection certificate from the Department, and submit the information and fee associated therewith in accordance with 314 CMR 2.12.

REGULATORY AUTHORITY

314 CMR 3.00: M.G.L. c. 21, §§ 27(12) and 34.

(PAGES 45 THROUGH 64 ARE RESERVED FOR FUTURE USE.)